IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.479 OF 2004

Gujarat Themis Biosyn Limited ...Applicant
Vs.
M/s.Paramed Pvt. Ltd. & Ors. ...Respondents

Mr. Bipin Shukla i/by M/s SRS Legal for the Applicant.
Ms M.H. Mhatre, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 19, 2005.

P.C.:

1. By the order dated 04th October, 2005, the Advocates appearing for the parties were put to the notice that on the next date the Application will be heard finally. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. None appears for the Respondent Nos.1 and 2.

2. By the order dated 20th May, 2004, a private complaint filed on behalf of the Applicant was dismissed for want of prosecution as the Applicant and his Advocate were absent. The learned Advocate appearing for the Applicant invited my attention to the true copy of the daily board of 11th march, 2004 of the court of the learned Trial Judge. He pointed out that the daily board shows that on 11th March, 2004, the next date was fixed as 10th June, 2004. He submitted that without notice to the original

complainant, the complaint was taken on board on 20th May, 2004 and was consequently dismissed for want of prosecution. He invited my attention to affidavit of Shri. Sanjay S. Mishra, Advocate who appeared for the complainant before the learned Magistrate. He submitted that the complaint could not have been taken on board on 20th May, 2004 and therefore, could not have been dismissed for want of prosecution.

3. I have considered the submissions. Shri Sanjay S. Mishra, Advocate has stated that on 11th March, 2004, the next date fixed as reflected from the daily board was 10th June, 2004. On that day, when the Advocate and the representative of the Applicant visited the court, it was found that the learned Metropolitan Magistrate was on leave. As the complaint was not shown on board the next date was fixed as 18th October, 2004. On that day, the complaint was not on board and after making inquiry it was realised that the complaint has been dismissed on 20th May, 2004.

4. The statement on oath made by the Advocate for the Applicant and the true copy of daily board dated 11th March, 2004 clearly show that on 11th March, 2004, the next date was fixed as 10th June, 2004.

There is no reason to disbelieve the statement made on oath by the Advocate appearing for the Applicant. As next date given to the complainant was 10th June, 2004, the complainant and his Advocate were not expected to remain present on 20th May, 2005. In view of this position, the order impugned deserves to be quashed and set aside.

5. Hence, I pass the following order:

: O R D E R :

i) Rule is made absolute in terms of prayer clauses (i) and (ii).

ii) The Criminal Case No.2662/S/2002 will be disposed of in accordance with law. The Trial Court will give intimation of the date fixed for hearing of the complaint to the Respondent Nos.1 and 2.

iii) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE